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Representative Fox
Senator Coleman
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Dear Representative Fox, Senator Coleman, and Members of the Committee:

Thank you very much for the opportunity to testify this week in favor of Raised Bill No. 6539, An Act Concerning Sentence Modification. As we noted in our previous letter to you, this bill allows prisoners serving longer sentences to petition their sentencing judges for modification of their sentences, without having to first obtain permission from the state's attorney. We would like to offer a suggestion for amending this bill to cover only juveniles serving long sentences that were imposed after mandatory transfer to adult court.

After having heard the Chief State's Attorney's comments in opposition to the bill, we can understand if you are reluctant to pass the bill, given its broad scope, the availability of parole consideration, and the possibility of more comprehensive action by the newly-created Connecticut Sentencing Commission on these questions in the future. However, the Commission has had only one meeting thus far and does not yet have an agenda for its future work. Furthermore, the Commission plans to meet only four times a year. Meanwhile, there is a small subset of cases that we believe call for immediate attention.

Last spring, The United States Supreme Court decided in *Graham v. Florida*¹ that sentencing juveniles to life sentences without parole can, in some circumstances, be cruel and unusual punishment in violation of the Eighth Amendment. The Court held that even a juvenile who commits a robbery or rape should have a "meaningful chance" for parole. The Court was particularly concerned with the fact that "Graham's sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate

¹ 130 S.Ct. 2011 (2010).

that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes.”² Litigation has begun in states around the country including California, Michigan, Missouri, Florida, and Iowa to determine the scope of this new right.

Currently, in Connecticut, we estimate that there are 10-15 cases in which children as young as 14 have been sentenced to life-equivalent sentences, **without the possibility of parole.**³ Even when they have grown up, gotten straight, become educated, and are willing to atone, at 30, 40, or 50 years of age, no one will ever be able to look at their cases and allow them to return to serve out their atonement in their communities – unless the state’s attorney agrees.

Graham v. Florida’s reasoning suggests that a constitutional right to a “second look” for these folks who have grown up inside prison should not depend on a discretionary decision by a prosecutor.

The Committee has the opportunity to forestall *Graham* litigation by amending this bill now. A measured amendment applying only to juvenile cases transferred automatically to adult court would allow kids sentenced to long terms of imprisonment without parole the right to return to their sentencing judges, after serving any mandatory minimum, for a second look. Suggested language for such an amendment is below.

In sum:

- Many juveniles who receive long sentences after mandatory transfer to adult court are not eligible for parole.
- Juveniles in Connecticut serving life-equivalent sentences for many serious crimes have a constitutional right to a “meaningful opportunity” for parole that cannot be vetoed by the prosecutor.
- Acting now to allow these few cases direct access to the sentencing courts for reconsideration would be the simplest and cheapest way to grant this constitutional right, forestalling litigation and also relieving the state of the cost of years of incarceration for inmates who have matured, reformed, and are no longer dangerous.

² *Id.* at 2033.

³ See National Conference of State Legislatures, *Juvenile Life Without Parole* (2010) (stating that Connecticut has 9 persons serving sentences of life without parole for offenses committed as juveniles); see also Spectrum Associates Market Research Incorporated, *A Study of Juvenile Transfers in Connecticut 1997-2002 Final Report* 19 (2003) (finding that 9 children received sentences of longer than 10 years between 1997 and 2002). A search of cases on WestlawTM reveals several additional people in Connecticut serving sentences in excess of 20 years for crimes they committed as juveniles.

Suggested amendment to Raised Bill 6539 (the underlined language below shows proposed changes to the current statute):

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 53a-39 of the general statutes is repealed and the following is substituted in lieu thereof (effective October 1, 2011):

(a) At any time during the period of a definite sentence of three years or less or a sentence longer than 20 years without parole imposed on a juvenile who was transferred to adult court under the provisions of Section 46b-127, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced.

(b) At any time during the period of a definite sentence of more than three years, upon agreement of the defendant and the state's attorney to seek review of the sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced.

(c) The provisions of this section shall not apply to any portion of a sentence imposed that is a mandatory minimum sentence for an offense which may not be suspended or reduced by the court.

(d) At a hearing held by the sentencing court or judge under this section, such court or judge shall permit any victim of the crime to appear before the court or judge for the purpose of making a statement for the record concerning whether or not the sentence of the defendant should be reduced, the defendant should be discharged or the defendant should be discharged on probation or conditional discharge pursuant to subsection (a) or (b) of this section. In lieu of such appearance, the victim may submit a written statement to the court or judge and the court or judge shall make such statement a part of the record at the hearing. For the purposes of this subsection, 'victim' means the victim, the legal representative of the victim or a member of the deceased victim's immediate family.